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No. 00-1880

In The

Supreme Court of the United States

October Term, 2000

SORIN PICHARDO and VICTOR ROSARIO,

Petitioners,

– against –

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to The United States Court of Appeals for the Second Circuit.

REPLY BRIEF FOR PETITIONERS

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POINT

ABSENT THE *PAYTON* VIOLATION, THE POLICE POSSESSED NEITHER "REASONABLE SUSPICION" TO DETAIN NOR PROBABLE CAUSE TO ARREST PETITIONERS

Both Judge Jacobs, writing for a the majority of the Second Circuit Court of Appeals, and the Solicitor General, constantly posit that the police possessed "reasonable suspicion" to detain Petitioners and "probable cause" to arrest them, as if those conclusions substitute for an analysis of the facts as they developed on October 12, 1998.

The "facts" adduced from the officers' testimony establish just the opposite. Neither of the arresting officers knew whether or not there were any drugs in apartment 1M. All they knew was that Gori had entered the apartment. Approximately forty minutes later, Gori was observed exiting the front entrance of the building known as 10 Hillside Avenue carrying what turned out to be a bag containing narcotics. The officers did not know where Gori had been during that forty minute period. Gori told the police that "someone had given him the bag in the building."

At the time that the door to apartment 1M was opened, the only person visible was the person who opened the door, and Detective Rodriguez either did not know or could not remember who opened the door. Detective Rodriguez observed Victor Rosario and two women sitting in the apartment. Detective Rodriguez had never seen either of those three people before. The

officers, with their guns drawn and held by their legs, ordered those three out of their residence, and subsequently ordered Sorin Pichardo from a rear room of the unit, out into the hallway, and placed all up against the hallway wall. Nothing the Detectives know or saw provided them with the justification to forcibly violate the boundaries of the Petitioners' home.

This court has recently reaffirmed the sanctity of a person's home and the rights of the residents not to be put upon by force in their homes. This Court has stated that "[a]t the very core of the Fourth Amendment stands the right of a man to retreat into his home and there be free from unreasonable governmental intrusion." Kyello v. United States, U.S. , 121 S. Ct. 2038, 2041 (2001) citing Silverman v. United States, 365 U.S. 505, 511, 81 S.Ct. 679 (1961). In reaffirming this Court's decision in Payton and in declaring that the Fourth Amendment draws a "firm line" and a "bright line" at the entrance to the house (121 S.Ct. at P. 2046) this Court prohibited police techniques which assisted the government in "explor[ing] details of the home that would have been previously been unknown without physical intrusion..." id.

The police herein knew nothing about apartment 1M or its occupants until after they had forcibly intruded into the Petitioners' residence and detained them. Any assertion by the Solicitor General to the contrary simply flies in the face of the facts.

WHEREFORE, Petitioners respectfully request that the Supreme Court of the United States grant them a writ of certiorari to this Court so that this Court can redress the incorrect ruling of the United States Court of Appeals for the Second Circuit.

Dated: September 12, 2001

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